IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 30TH OCTOBER 2007 / 8TH KARTHIKA 1929

Bail Appl..No. 6549 of 2007()

(CRIME NO.282/2007 OF PALODE POLICE STATION)

PETITIONER/ACCUSED:

C. KANNAN, S/O. CHUDALAMUTHU PILLAI,
DWARAKATTIL VEEDU, EDAPALAYAM POST, KOLLAM DIST.

BY ADV. SRI.ANCHAL C.VIJAYAN

RESPONDENT: COMPLAINANT:

STATE OF KERALA THROUGH THE
SUB INSPECTOR OF POLICE, PALODE POLICE STATION,
REPRESENTED BY PUBLIC PROSECUTOR, HIGHC COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 30/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KSS

R.BASANT, J

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B.A.No.6549 of 2007

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Dated this the 30th day of October, 2007

ORDER

Application for anticipatory bail. The petitioner, a police constable faces allegations in a crime registered under Section 420 IPC. Later, allegation under Section Dowry Prohibition Act has been included. Investigation is in progress. The petitioner apprehends imminent arrest. The petitioner has already been suspended from service as Police Constable.

2. The crux of the allegations against the petitioner is that he, a 26 year old person, contracted a marriage with the daughter of the de facto complainant. The de facto complainant is himself a Head Constable in the Police Department. The tenor of the allegations against the petitioner is that he initially did not make any demands against the de facto complainant but after the fixation of marriage and after arrangements proceeded, he started insisting on certain payments. This was not acceptable to the de facto complainant and her daughter. The marriage arrangements thus broke down. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. Annexure A2, which is produced by the petitioner, was prepared under duress. The petitioner is only a junior

official of the Police but the de facto complainant is much more experienced than him. The other senior officials of the Police prepared Annexure A2 and the petitioner had only rewritten it, he submits. The learned counsel for the petitioner further contends that even if the recitals in Annexure A2 were considered in detail, it does not at all reveal commission of the offence under Sec.420 IPC or under the provisions of the Dowry Prohibition Act.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that Annexure A2 produced by the petitioner itself is eloquent and a reading of Annexure A2 must convey to this Court the nature and acceptability of the allegations raised against the petitioner.

4. I have considered all the relevant inputs. At this early stage, it is not necessary for me to embark on any detailed discussions on merits about the acceptability of the allegations or the credibility of the data collected. Suffice it to say that I have gone through Annexure A2 produced by the petitioner himself in detail. I have considered his contention that it was not voluntary and was extracted from him under duress. At the moment there is no material to accept that contention even prima facie.

5. A reading of Annexure A2 certainly persuades me to conclude

that this is not a fit case where the extraordinary equitable discretion under Section 438 Cr.P.C. can or ought to be invoked in favour of the petitioner. The discretion which is sought to be invoked is an extraordinary equitable discretion available to this Court. It is by now trite that such discretion has to be invoked sparingly and in exceptional cases only in aid of justice. The persons who seek such equitable relief must also be shown to have acted fairly and equitably. I shall not embark on any detailed discussion about the contumacious role of the petitioner. Suffice it to say that a reading of Annexure A2 does itself convince me that this is not a fit case where Section 438 Cr.P.C. can or ought to be invoked in favour of the petitioner.

6. In the result, this application is dismissed. It is for the petitioner to appear before the learned Magistrate and seek regular bail in the ordinary and normal course. Needless to say, if the petitioner appears before the Investigating Officer or the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

sj

/TRUE COPY/

P.A.TO JUDGE